

## REMARKS

### The Office Action

Claims 1-12 are pending and examined in the present Office Action. Claims 1-8 and 10-12 stand rejected under 35 U.S.C. § 102(b) for lack of novelty. Claim 9 is rejected under 35 U.S.C. § 103(a) for obviousness. Applicant addresses each of these rejections below.

### Pending claims

With this reply, claims 3 and 6 are canceled and claims 13 and 14 are added. Claim 1 has been amended to include the limitations of claims 3 and 6. Claims 4-5 and 7-10 have been amended to depend on claim 1 in view of the cancellation of claim 3. Support for these amendments can be found throughout the specification, the claims, and in Figure 1. For example, the amendment to claim 14 can be found on page 4, lines 1-7 and in Figure 1. No new matter has been added by these amendments.

### Rejection under 35 U.S.C. § 102(b)

Claims 1-8 and 10-12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sakamoto (U.S. Patent No. 6,095,972; hereinafter “Sakamoto”). Applicant traverses this rejection as applied to the amended claims.

M.P.E.P. § 2131 states:

[A] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently, described in a single prior art reference (emphasis added).

This standard for anticipation has not been met because Sakamoto fails to describe each and every element of the rejected claims. Claim 1, from which claims 2-8 and 10-12 depend, has been amended to include “a removable optical device for observation of space around the distal end of the spatula device” (emphasis added). The Examiner has stated that Sakamoto, in column 4, lines 25-34, teaches the provision of a “conventional light source 34 that may also be part of a fiber optic circuit, fixable within the blade and either stiff, flexible or removeable, as is known in the art.” Applicant asserts, however, that nowhere in Sakamoto is a removable optical device disclosed. As Sakamoto fails to teach this element of amended claim 1, Sakamoto cannot anticipate any of claims 1-8 and 10-12. The rejection of these claims under 35 U.S.C. § 102(b) may be withdrawn.

#### Rejection under 35 U.S.C. § 103(a)

Claim 9 stands rejected under 35 U.S.C. § 103(a) for obviousness over Sakamoto in view of Rothfels (U.S. Patent No. 5,873,818; hereinafter “Rothfels”). This rejection is respectfully traversed.

M.P.E.P. § 2142 states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the

art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991).

This standard for obviousness has not been met as the combination of Sakamoto and Rothfels does not teach or suggest all of the limitations of the claimed invention. Claim 9 is directed to the spatula device according to claim 1, which includes a removable optical device with a wide angle lens for observation of space around the distal end of the spatula device, with an angle ranging from 0 to 75 degrees. The Office has cited Sakamoto in combination with Rothfels as teaching the components of claim 9. As detailed above, however, Sakamoto fails to teach a removable optical device for observation of space around the distal end of the spatula device.

Rothfels does not provide the teaching missing from the Sakamoto disclosure. Rothfels does not teach a spatula device comprising a removable optical device for observation of space around the distal end of the spatula device as required by claim 1, from which claim 9 depends. Rothfels discloses a laryngoscope apparatus containing "an optical system mounted to the blade portion including an eyepiece" (claim 1, column 3, line 57 – column 4, line 2; emphasis added). The cited references therefore cannot and do not support a *prima facie* case of obviousness for claim 9. The rejection of claim 9 under § 103(a) may be withdrawn.

#### Comment on new claims 13 and 14

Applicant notes that a spatula device comprising a single, hinged flat element at its distal end is advantageous over laryngoscopes disclosed in the prior art, e.g. Sakamoto. First, by reducing the number of blade tips from two to one, only one side of the patient's laryngopharynx is contacted. This permits delicate and cautious operation of the instrument therein. Furthermore, a reduction to only one blade tip allows a wider field of application in difficult or complex situations where patients may have congenital deformities such as a short "bull" neck or other conditions that narrow the oral cavity.

The placement of the pulling handle in a direction parallel to the grip of the spatula device is also advantageous. The operation of the laryngoscope disclosed in Sakamoto requires the insertion of an operator's thumb between the thumb strap 30 and the thumb plunger 20. The operation of this mechanism with a single thumb is complex and time-consuming in comparison to the freely accessible pulling handle 4 in the instant invention. This important feature is particularly useful in an emergency situation when only a few seconds are available for grasping the laryngoscope, inserting the blade of the laryngoscope into the patient's mouth, and exposing vocal cords as in establishing an airway.

Applicant further notes that the pulling handle in the instant invention permits much more precise operation of the hinged element as compared to mechanisms such as

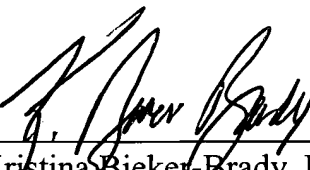
the thumb plunger disclosed, for example, in Sakamoto. The stroke of the thumb push rod 22 that is useable by the operator's thumb is relatively short, resulting in a disadvantageous ratio of stroke to swiveling movement of the blade tips 12, 14. By contrast, the pulling handle 4 in the instant invention is operated by four fingers other than the thumb in the direction perpendicular to the longitudinal axis of the handle. This feature provides greater stroke adjustment and finer tuning of the hinged mechanism, resulting in a more precise swiveling of the associated blade tip. Applicant notes that, in comparison Kadell (U.S. Patent No. 4,314,551), the pulling handle 4 in the instant invention is located a greater distance from the grip 7 to prevent inadvertent engagement of the blade tip during insertion of the spatula device.

## CONCLUSION

Applicant submits that the claims are now in condition for allowance, and such action is respectfully requested. If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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